

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 1:18-CR-92
	)	
v.	)	
	)	
JAMES E. MACALPINE	)	
_____	)	

**NOTICE OF POTENTIAL FOR EXPERT TESTIMONY**

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, and, pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G), gives notice of the potential that it will introduce expert testimony during the Government's case-in-chief at trial.

The United States expects to call up to four Internal Revenue Service (IRS) witnesses at trial. The first witness, Susan English, is a Court Witness Coordinator (CWC) with the IRS. The United States expects her to testify regarding IRS filing and payment transcripts, as well as other forms of business and public records retained by the IRS. The second witness, Jerry Arrington, is an IRS Revenue Agent currently assigned to the South Atlantic Exam Area. The United States expects that he will testify regarding actions that he took in connection with civil examinations of the Defendant's tax liability, as well as to the Defendant's filing/non-filing history more generally and its consequences for the Defendant's current amount of tax due and owing. The third witness, Cecilia Hill, is an IRS training coordinator, but she was previously a Revenue Officer working collections cases. The United States expects that she will testify regarding interactions that her collections team had with the Defendant before this case became a criminal matter. The fourth witness, Jennifer Berry, is a Special Agent with IRS-CI, and she will testify regarding the results of her criminal investigation, including summarizing certain bank records obtained by her team.

The United States does not intend to proffer any of its witnesses as “experts,” although, based on “knowledge, skill, experience, training [and] education,” they are uniquely qualified to “assist the trier of fact to understand the evidence or to determine a fact in issue[.]” Fed. R. Evid. 702. It is likely that one or more of these witnesses will testify regarding summaries prepared from voluminous evidence, or regarding their computation, from numbers contained within business records or public records, of the Defendant’s tax due and owing, but their testimony is unlikely to veer from simple mathematics into the realm of “opinion,” the admission of which Rule 702 circumscribes. Indeed, IRS agents have routinely been permitted to testify concerning IRS documents, and to compute income and tax liabilities, in criminal tax cases without being qualified as an expert. *See e.g. United States v. Stierhoff*, 549 F.3d 19, 28 (1st Cir. 2008); *United States v. Harned*, 279 Fed. Appx. 262, 264 (4th Cir. 2008). In other cases, however, the IRS agents have been qualified as a “tax computation expert.” *See e.g. United States v. Mikutowicz*, 365 F.3d 65, 72 (1st Cir. 2004); *United States v. Townsend*, 31 F.3d 262, 270 (5th Cir. 1994). In an abundance of caution, the Government therefore submits this notice.

The evidence supporting the testimony of each of these witnesses has been made available to the Defendant through discovery. In addition, RA Arrington provided the Defendant with his calculations of tax deficiency at the close of each of the civil examinations he performed.

Finally, the United States notes that it continues to provide the Defendant with open-file discovery that meets and exceeds the requirements of Fed. R. Crim. P. 16(a). The United States has formally requested reciprocal discovery, pursuant to Fed. R. Crim. P. 16(b), and has received nothing from the Defendant. Here, the United States reiterates its reciprocal discovery request.

Respectfully submitted this 31st day of December 2018.

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/s/ Daniel V. Bradley

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of December 2018, the foregoing was duly served upon the following standby counsel through CM/ECF:

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